

## JOURNAL OF THE HOUSE.

Tuesday, December 7, 2004.

Met according to adjournment, at eleven o'clock A.M., in an Informal Session, with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer.

Eternal God, Our Guiding Light, we are grateful to You for making known to us the pathway through life which gives direction, purpose and meaning to our daily existence. Help us to follow Your ways. We are grateful, too, for the blessings which we enjoy as citizens of this country and commonwealth. As we struggle in our multicultural communities to articulate clearly and to resolve thoughtfully the complex, often emotional, issues of the moment, we depend upon the experience and goodwill of our elected leaders. Today, we pause to recognize the years of public service of the retiring members of this House. Setting priorities, planning for the future, serving the public and addressing legislative issues is often most stressful. We are grateful to the women and men who seek public office and serve the people and our communities.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of  
allegiance.

At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

### *Papers from the Senate.*

Long term  
care  
insurance.

The engrossed Bill establishing standards for long term care insurance (see Senate, No. 2415) came from the Senate with amendments in section 3 (as printed), in line 144, striking out the following: "paragraph (5)" and inserting in place thereof the following: "paragraph (e)"; in line 202, striking out the word "may" and inserting in place thereof the words "shall not"; and in lines 257 and 258, striking out the following: "subsections (a) to (f) of this section, inclusive," and inserting in place thereof the following: "clauses (i) to (vi), inclusive, of paragraph (2)".

Under suspension of Rule 35, on motion of Mr. Mariano of Quincy, the amendments (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted, in concurrence.

Underwriting  
Association.

The House Bill relative to the Massachusetts Property Insurance Underwriting Association (House, No. 4672) came from the Senate passed to be engrossed, in concurrence, with amendments in section 2 (as printed), in lines 48 and 49, striking out the following: "increase rates in large share territories by not less than 3 per cent and shall also" (as changed by the Senate committee on Bills in the

Third Reading); striking out section 4 and inserting in place thereof the following section:

"SECTION 4. There shall be a special commission to examine the homeowner insurance market in large share territories, as defined in section 1 of chapter 175C. The commission shall investigate the availability and affordability of property insurance; the relevant rate driving factors including, but not limited to, insurance fraud, types of loss costs and their frequency, the cost and availability of reinsurance; the use of storm damage prediction data; the creation and potential benefit of a state-run catastrophic reinsurance program; and the overall competitiveness of the homeowners market in large share territories. The commission shall make any recommendations for legislative or regulatory action on this matter, with the clerks of the house and senate before November 1, 2004.

Said commission shall consist of the chairman of the house committee on insurance or a designee; the vice chairman of the house committee on insurance of a designee, the house minority leader or a designee; the chairman of the senate committee on insurance or a designee; the vice chairman of the senate committee on insurance or a designee, the senate minority leader of a designee, 1 member of the house of representatives and one member of the senate to represent Cape Cod or coastal areas of the commonwealth; the commissioner of insurance or a designee; a representative from the Massachusetts Property Insurance Underwriting Association; a representative of the Massachusetts Association of Insurance Agents, a representative of the Center for Insurance Research, and a representative of the Massachusetts Public Interest Research Group."; and adding at the end thereof the following section:

"SECTION 5. Sections 1, 2 and 3 shall take effect on October 1, 2005."

Under suspension of Rule 35, on motion of Mr. Mariano of Quincy, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith.

The same member then moved that the House concur with the Senate in its amendments with further amendments in section 4, at the end of the first paragraph, by striking out the date "November 1, 2004" (inserted by amendment by the Senate) and inserting in place thereof the date "April 1, 2005"; in section 5, striking out the following: "1, 2 and 3" (inserted by amendment by the Senate) and inserting in place thereof the following: "1 and 2"; and by adding at the end thereof the following section:

"SECTION 6. Sections 3 and 4 shall take effect upon the passage of this act."

The further amendments were adopted. The House then concurred with the Senate in its amendments, as amended. Sent to the Senate for concurrence in the further amendments.

The House Bill authorizing the town of Plymouth to lease certain land (House, No. 4818, changed) came from the Senate passed to be engrossed, in concurrence, with an amendment in section 1 adding at the end thereof the following sentence: "Such leases may provide that the lessee shall be responsible for the design, development, construc-

Plymouth,  
parking  
facility.

tion and maintenance of improvements to the site as outlined in the lease agreement.”.

Under suspension of Rule 35, on motion of Mr. O’Brien of Kingston, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith; and it was adopted, in concurrence.

*Reports of Committees.*

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill establishing the Essex North Shore Agricultural and Technical School district (Senate, No. 2419, amended) ought to pass with an amendment by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 5145. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Ms. Spiliotis of Peabody, the bill was read a second time forthwith.

The amendment recommended by the committee on Ways and Means was adopted; and the bill, as amended, was ordered to a third reading.

Under suspension of the rules, on motion of Mr. Spiliotis of Danvers, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed. The bill (Senate, No. 2419, amended) then was sent to the Senate for concurrence in the amendment.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill authorizing the development of a regional education, training and skills alliance center in the city of Taunton (Senate, No. 2177, amended) ought to pass with an amendment by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 5040. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Kafka of Stoughton, the bill was read a second time forthwith.

The amendment recommended by the committee on Ways and Means was adopted; and the bill (Senate, No. 2177, amended) was ordered to a third reading.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill relative to the transporting of persons in wheelchairs (House, No. 2650) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Ms. Jehlen of Somerville, the bill was read a second time forthwith; and it was ordered to a third reading.

Essex  
Agricultural  
School.

Taunton,  
training  
center.

Wheelchair  
transporting.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill relative to the issuance of pension funding bonds by the city of Brockton (House, No. 3855) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Flynn of Bridgewater, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill authorizing the town of Brookline to issue pension obligation bonds (House, No. 4404) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of the rules, on motion of Ms. Grant of Beverly, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the House Bill relative to the Charter of the town of Harwich (House, No. 5102) be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. deMacedo of Plymouth, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the House Bill establishing a capital depreciation fund in the town of Paxton (House, No. 5115) be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Rodrigues of Westport, the bill was read a second time forthwith; and it was ordered to a third reading.

By Mr. Dempsey of Haverhill, for the committee on Science and Technology, that the Bill clarifying a minimum threshold for the purchase of existing renewable power for the purposes of the renewable portfolio standard regulation (House, No. 4293) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling with an amendment (House, No. 4954) previously recommended by the committee on Energy pending.

By Mr. Dempsey of Haverhill, for the committee on Science and Technology, that the Bill relative regulating the use of recording devices in motor vehicles (House, No. 4439) ought to pass with an amendment substituting therefor a bill with the same title (House, No. 5146). Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling with the amendment pending.

Brockton,  
pension  
funding.

Brookline,  
pension  
obligation  
bonds.

Charter,  
Harwich.

Paxton,  
depreciation  
fund.

Renewable  
power.

Motor  
vehicles,  
recording  
devices.

By Mr. Scaccia of Boston, for the committee on Rules, that the following bills ought to pass:

Peter E. Warren.  
Authorizing the town of Harvard to employ Peter E. Warren as fire chief for two years after his sixty-fifth birthday (Senate, No. 1930) [Local Approval Received];

Warrantless arrest.  
Authorizing the warrantless arrest for reckless or negligent vehicular homicide and reckless or negligent operation (Senate, No. 2286, amended); and

Environmental affairs.  
Relative to the distribution of citation books to the office of law enforcement in the Executive Office of Environmental Affairs (Senate, No. 2467); and

Haverhill, meetings.  
By Mr. Dempsey of Haverhill, for the committee on Science and Technology, that the Bill authorizing teleconference meetings of governmental bodies in Haverhill, Massachusetts (House, No. 4734) ought to pass;

Severally referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Protective custody.  
By Mrs. Owens-Hicks of Boston, for the committee on Local Affairs and Regional Government on the part of the House, on House, No. 4869, a Bill relative to persons in protective custody (House, No. 5147).

Dedham.  
By the same member, for the committee on Local Affairs and Regional Government, on a recommitted petition, a Bill relative to the distribution of information to the voters of the town of Dedham (House, No. 4732, changed in section 1, in line 7, by striking out the words "by-law and at its" and inserting in place thereof the words "by-law, and, at the", and, in line 9, by striking out the word "course" and inserting in place thereof the word "cause"; and in section 2, in line 6, by striking out the words "by-law and" and inserting in place thereof the words "by-law, and,") [Local Approval Received].

Boston Water and Sewer.  
By Mr. Scaccia of Boston, for the committee on Rules, on House No. 4718, reports, in part, a Bill relative to the Boston Water and Sewer Commission (House, No. 3680).

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

#### *Engrossed Bills.*

Bill enacted.  
The engrossed Bill authorizing the city of Medford to use certain land for memorial purposes (see House, No. 4864, amended) (which originated in the House), in respect to which the Senate had concurred in adoption of the emergency preamble, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

#### *Engrossed bills*

Bills enacted.  
Authorizing the town of Westborough to grant an additional license for the sale of wines and malt beverages to be drunk on the premises (see Senate, No. 2326); and

Relative to certain housing in the city of Peabody (see Senate, No. 2501);

(Which severally originated in the Senate);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

#### *Orders of the Day.*

The House Bill relative to a retirement buy-back for Donald Muldoon (printed as Senate, No. 1591), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence.

Third reading bill.

The engrossed Bill relative to compensation for certain erroneous felony convictions (see House, No. 4255, amended), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see House, 5057), was considered.

Erroneous felony convictions.

The committee on Bills in the Third Reading then reported recommending that the amendment be considered in the following form:

In House document numbered 4981, as printed (being the text of said House, No. 4255, as amended and engrossed), in section 1, in line 12, by inserting after the figures "127" the words "when the governor expressly states in writing his belief in the claimant's innocence", in lines 17 and 18, by striking out the words "and either he was found not guilty at the new trial or", in line 27, by striking out the words "consistent with" and inserting in place thereof the words "which tend to establish", in lines 40 and 41, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

"(ii) was charged by indictment or complaint with the commission, and was convicted, of an offense classified as a felony;"; in line 53, by striking out the word "; and", in lines 54 to 57, inclusive, by striking out the paragraph contained therein and inserting in place thereof the following two paragraphs:

"(vi) is factually innocent of the crime or crimes charged in the indictment or complaint, including any lesser included offense of the crime so charged and any other crime directly related to the facts underlying the charged offense or offenses; and

(vii) did not by his own conduct cause or bring about his conviction."

in lines 63 to 70, inclusive, by striking out sentence contained therein and inserting in place thereof the following 2 sentences: "In the interests of doing substantial justice, with regard to the weight and admissibility of evidence submitted by the claimant or the commonwealth, the court presiding at a jury-waived trial shall exercise its discretion by giving due consideration to any difficulties of proof caused by the passage of time, the death or unavailability of witnesses, or other factors not caused by the claimant, or those acting on the claimant's or the commonwealth's behalf. At a jury trial, the court shall consider these same factors as part of the exercise of its discretion when it admits evidence, and the court shall instruct the jury that it may consider the same factors when it weighs the evidence presented at trial.", in line 71, by striking out the words "fourth or fifth" and inserting in place thereof the words "Fourth,

Erroneous  
felony  
convictions.

Fifth or Sixth”, in line 104, by inserting after the word “action.” the following 2 sentences: “Any such victim, shall be allowed, but may not be compelled, to testify or furnish other evidence. If the victim elects not to testify, his prior recorded testimony, given under oath, at a relevant proceeding, shall be admissible regardless of whether the victim is then available to testify.”, in lines 127 to 132, inclusive, by striking out the sentence contained therein and inserting in place thereof the following 3 sentences: “In making that determination, the fact-finder’s primary consideration shall be, but need not be limited to, the lawful income the claimant would have earned but for his incarceration. The court, in its discretion, may admit expert testimony on this factor. The fact-finder may also be limited to, the particular circumstances of the claimant’s trial and other proceedings, the length and condition under which the claimant was incarcerated, and any other factors deemed appropriate under the circumstances to fairly and reasonable compensate the claimant.”.

The report was accepted.

The amendment recommended by the Governor then was rejected.

Ms. Jehlen of Somerville then moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 5148.

The amendment was adopted. Sent to the Senate for concurrence.

#### *Recess.*

Recess.

At the hour of twelve o’clock noon, on motion of Mr. Lepper of Attleboro (Mr. Donato of Medford being in the Chair), the House recessed until one o’clock P.M.; and at twenty-five minutes after one o’clock the House was called to order with the Speaker in the Chair.

#### *Guests of the House.*

Shepherd Hill  
Chamber  
Singers.

During the session, the Speaker declared a brief recess and introduced the Shepherd Hill Chamber Singers. Accompanied by President Hannah Gunnell and Director Connie Vanco Galli, the group performed the “National Anthem” and “Auld Lang Syne”. They were the guests of Representative Kujawski of Webster.

Guests  
of the  
House.

During the session, the Speaker declared a brief recess and introduced former Speaker Charles F. Flaherty; Senate President Robert E. Travaglini; former Representative William “Bill” Glodis of Worcester and his son, former Representative and current Senator Guy W. Glodis; Ronald Simmons, husband of the late Representative Mary Jane Simmons; and Representatives-elect Jennifer L. Flanagan of Leominster and Martha M. Walz of Boston.

#### *Silent Prayer.*

Silent  
Prayer.

At the request of the Speaker, the members, guests and employees stood in a moment of silent prayer to the memory of former Representative Mary Jane Simmons, a member of the House from Leominster from 1993 to 2004, inclusive.

#### *Valedictory Addresses.*

The following members, who were not returning for the 2005-2006 Legislative session, then addressed the House regarding their departure from service in the House of Representatives: Representatives Howland of Freetown; Spilka of Ashland; Asselin of Springfield; Buoniconti of West Springfield; Hillman of Sturbridge; Demakis of Boston; Kelly of Dalton; Ciampa of Somerville; Finneran of Boston; and Ruane of Salem.

Valedictory  
addresses.

#### *Order.*

On motion of Mr. Finneran of Boston,—

*Ordered*, That when the House adjourns today, it adjourn to meet on Thursday next at eleven o’clock A.M.

Next  
sitting.

Messrs. Finneran of Boston, Goguen of Fitchburg and Knuuttila of Gardner then moved that as a mark of respect to the memory of Mary Jane Simmons, a member of the House from Leominster from 1993 to 2004, inclusive, the House adjourn; and the motion prevailed.

Accordingly, at forty-seven minutes before four o’clock P.M., on motion of Mr. Ruane of Salem, the House adjourned, to meet on Thursday next at eleven o’clock A.M., in an Informal Session.